

**IN THE EASTERN CARIBBEAN SUPREME COURT
COMMONWEALTH OF DOMINICA**

**IN THE HIGH COURT OF JUSTICE
(CIVIL DIVISION)**

CLAIM NO: DOMHCV 2024/0059

**IN THE MATTER OF THE BAIL ACT, NO 20 OF 2020, SECTIONS 4(3) AND 4(4), AND SECTIONS 7(1)
AND 7(2)**

AND

**IN THE MATTER OF AN APPLICATION BY JONATHAN LEHRER THAT BAIL BE GRANTED HIM WITH
OR WITHOUT CONDITION**

BETWEEN:

JONATHAN LEHRER	-	Claimant
V		
THE DIRECTOR OF PUBLIC PROSECUTIONS	-	Defendant

APPEARANCES:

Mr Andrew Pilgrim, KC, along with Mr Lennox Lawrence and Ms Jodie Luke of Platinum Law Chambers and Mr Wayne Nordé of Nordé and Lambert Chambers, for the Claimant

Mr Keith Scotland, along with State Counsel Ms Daina Matthew and Ms Marie Louise Pierre Louis, for the Defendant

2024: April 9th, 18th

JUDGMENT

Introduction

1. **COLIN WILLIAMS J:** On the 5th of December 2023, the Claimant, Mr Jonathan Lehrer, was jointly charged with another person for two counts of murder. The Claimant was remanded to the State Prison at Stockfarm. The Claimant's application was that he be granted bail to permit him to travel for medical reasons.
2. Mr Lehrer's co-defendant, (Mr Robert Thomas Snyder Jr), was not a party to this bail application.
3. On the 27th of March 2024, a Fixed Date Claim Form with an Affidavit in Support of the Claim form together with five exhibits were filed on behalf of the Claimant. The exhibits were:
 - (i) Copies of the charges in relation to the deaths of (a) Daniel Joseph Langolis and (b) Dominique Marchand;
 - (ii) A copy of a letter to Assistant Chief of Police (acting) Mr Joeffrey James, dated the 29th of February 2024, demanding disclosure in relation to eleven identified bits of evidence which Mr James reportedly spoke of with a foreign news entity;
 - (iii) A copy of a letter to Chief of Police (acting), Mr Davisdon Valerie, dated the 29th of February 2024, demanding "full disclosure of all that evidence, both exculpatory and incriminating" relating to the Claimant and his co-accused;
 - (iv) A copy of "Attending physician's report and recommendation" from the Claimant's physician; and
 - (v) A copy of a travel itinerary in the Claimant's name
4. A Notice of Application, along with an Affidavit in Support of the Notice of Application and a Certificate of Extreme Urgency was also filed on behalf of the Claimant on the same date (27th March 2024), as the Fixed Date Claim form.
5. The Applications and accompanying Affidavits were served on the Defendant the following day, Thursday the 28th of March 2024, (Holy Thursday).
6. The specific remedies being sought by the Claimant as stated in the Fixed Date Claim Form were:
 - 1) An Order that the Claimant be granted bail with or without condition; and

- 2) An order for an abridgement of time and that the claim be heard on an extremely urgent basis.

The Bail Act

7. Bail in the Commonwealth of Dominica is governed by the **Bail Act, No 20 of 2020**. The Claimant relied on sections 4(3), 4(4), 7(1) and 7(2) of the **Act**.

8. The provisions of section 4 subsections (3) and (4) of the **Bail Act** as they relate to this application read:

“(3) Subject to section 7, a person who is charged with a serious offence is not entitled to bail as of right and shall not be granted bail unless that person satisfies the court that there is just cause in all the circumstances.”

“(4) Where bail is granted, the conditions of bail shall be reasonable.”

9. Section 7(1) of the **Bail Act** lists murder as one of the offences for which if a person charged with committing the offence “the court shall not grant bail to that defendant unless it is satisfied that appropriate circumstances exist to justify the granting of bail.”

10. The **Bail Act** goes on to state at section 7(2):

“The appropriate circumstances referred to under subsection (1) of which the court must be satisfied include the court being satisfied that –

- (a) the defendant will surrender to custody,
- (b) the defendant will not commit any offence whilst on bail,
- (c) the defendant will not interfere with witnesses,
- (d) the defendant should not be kept in custody for his own protection or for the protection of the community, and
- (e) that it is in the public interest to grant the defendant bail.”

11. The Defendant, in opposing bail, relied on section 6 of the **Bail Act**. The relevant provisions of section 6 of the **Act** state:

“(1) Where a person is accused of an offence, the court may refuse an application for bail if –

(a) the court is satisfied that there are substantial grounds for believing that the person, if released on bail, whether subject to conditions or not would –

- (i) fail to surrender to custody;
- (ii) commit an offence while on bail, or
- (iii) interfere with witnesses or evidence, or
- (iv) otherwise pervert the course of justice whether in relation to himself or any other person;

(b) the court is satisfied that the defendant should be kept in custody –

- (i) for his own protection;
- (ii) for the protection of the community, or
- (iii); or
- (iv) for the preservation of the public order.

(c)

(d)

(e)

(f)

(g)

(h)

“(2) In the exercise of its discretion under subsection (1), the court shall have regard to any relevant factor including the following:

(a) the nature and seriousness of the offence... and the probable method of dealing with the defendant if convicted for it;

(b) the character, antecedents, associations and community ties of the defendant;

(c)

(d) the strength of the evidence of his having committed the offence...

(e) the length of time the defendant would spend in custody if the court were to refuse the defendant bail.”

12. The Claimant's bail application was listed for hearing at 9.00 am on the 9th of April 2024.
13. At 8.30 am on the morning of the 9th of April 2024, an Affidavit from Ms Rhonda Joseph was filed on behalf of the Claimant. She is the Executive Director of the Invest Dominica Authority. Ms Joseph supported the Claimant's application for bail and gave an undertaking to be a surety. Ms Joseph indicated that she owned a property at Pottersville, in the Parish of Saint George and had a valuation done on the 3rd of April 2024 by a Quantity Surveyor. The report of the Quantity Surveyor was attached to her Affidavit and it showed a forced sale price of the property to be \$875,000.00. It was not stated whether the currency was in Eastern Caribbean dollars or some other currency.
14. Two Affidavits opposing the Claimant's application were filed on behalf of the Defendant at 8.38 am and 8.47 am on the 9th of April 2024. The deponents to those Affidavits were, respectively, the Superintendent of Prisons (acting) Mr Jeffrey Edmund and the lead investigator in the case against the Claimant, Assistant Chief of Police (Acting) Mr Joeffrey James.
15. At the hearing of the bail application, oral submissions were made by Mr Andrew Pilgrim, Kings Counsel, on behalf of the Claimant and Mr Keith Scotland on behalf of the Defendant.
16. Both parties sought and obtained leave to file Affidavits in response to the Affidavits filed by the other side within minutes of the commencement of the hearing. They were given leave to do so by Friday the 12th of April 2024.
17. The Claimant did not file any Affidavit in response before the extended deadline of 3:00 pm on Wednesday, the 17th of April 2024. However, there were two Affidavits filed some time later by the Claimant and those would be addressed later.
18. The additional Affidavit on behalf of the Defendant in opposition to the proposed surety showed that Ms Joseph's property was the subject of a caveat entered on the 23rd day of March 2022 in favour of the Republic Bank Limited. The gist of the Defendant's evidence was to show that Ms Joseph is not a suitable surety.

Claimant's Affidavit

19. The Claimant, Mr Lehrer, gave his address as Bois Collette Estate, Soufriere, in the Parish of Saint David, in the Commonwealth of Dominica. He said that he is a Dominican. Mr Lehrer said that he sold his residence in the United States of America and only has a residence here in Dominica. He indicated that since 2011 he has "developed an extremely successful business" and has "substantial investments in the tourism, tours and hospitality sectors in Dominica" which "amount to several millions of dollars." He purchased a 50-acre property on Dominica and during the tourism season he employs up to fifty persons, twenty of whom are on a part-time basis.

20. Mr Lehrer said that he is innocent of the offences of murder for which he was charged. He said that he did not commit the offences as alleged; that he did not participate in the commission of the offences; neither was he present when the deceased met their deaths. The Claimant said the charges against him "are without merit."
21. Further, Mr Lehrer states that he was "reliably informed" that there were "no eyewitnesses, nor physical evidence" connecting him to the deaths of the two people.
22. The Claimant noted that to date, despite demands made on his behalf for disclosure by the State of all evidence against him, he has received nothing. His preliminary inquiry is now set for the 16th of July 2024.
23. The Claimant's bail application was grounded principally on paragraphs 19 to 32 of his Affidavit. Those paragraphs detail his medical condition. Mr Lehrer places reliance on a medical report from a doctor that was exhibited as part of the Claimant's Affidavit. The doctor's report stated that the Claimant could have prostate cancer and immediate attention was needed. Mr Lehrer's conclusion was that "this urgent medical attention cannot be secured if I remain in custody at the State Prison."
24. The Claimant detailed the challenges he had urinating. He said that on the 28th of February he was "rushed to the Dominica China Friendship Hospital for medical attention, inclusive of a placement of a catheter." He said this was "a temporary stop gap measure."
25. The Claimant said that "the medical practitioner at the Dominica China Friendship Hospital" told him, (the Claimant), that his "conditions are symptomatic of an enlarged prostate and symptoms of prostatic cancer."
26. Mr Lehrer in emphasizing his claim for bail, highlighted the recommendations of his doctor, and the challenges that he faced in having the physician's recommendations carried out in Dominica. Those recommendation were:
 - i. A very high fiber diet. Mr Lehrer said this was not available at the prison, and it therefore places him "at risk of further sharp deterioration."
 - ii. A focus multiparametric MRI Scan with contrast plus MRI guided biopsy and robotic prostatectomy. Mr Lehrer said the robotic prostatectomy was not available in Dominica.
 - iii. Urgent prostate workup and surgical intervention. Mr Lehrer said this was "not readily available" in Dominica and arrangements must be made to receive such interventions.
27. According to the Claimant, he needed urgent medical attention overseas. He feared that his "deteriorating medical condition is a real threat to my life and livelihood."

28. Mr Lehrer complained of the sanitary condition at the prison. He stated that the management of the catheter and urine bag was proving to be a challenge. He detailed the health protocol to prevent infection and noted the difficulties to comply with the requirements.
29. The Claimant said that he wanted to go to see a named urologist in Texas, United States of America. He said that in Texas, he would be able to access the "urgent medical attention and surgical procedures inclusive of focus multiparametric MRI scan with contrast plus MRI guided biopsy of the prostate, urgent prostate workup and surgical intervention for prostate cancer."
30. Mr Lehrer indicated that given the urgency, an airline reservation was made for him to travel to Texas. A copy of an itinerary was attached to the Claimant's Affidavit as an exhibit and it showed that an economy fare ticket was purchased for Mr Lehrer to travel from Dominica, via Miami to Austin, Texas, on the 27th of March 2024. (That is the same day the Bail Application Claim was filed). The stated return date on the purchased ticket was Saturday the 27th of April 2024.
31. The Claimant stated in his Affidavit that if he was given bail that he will surrender to custody when required. He noted that he had "very substantial assets in Dominica" and that he had made Dominica his permanent home since 2011. He said that it was his intention to fly directly to Texas for medical attention and return to Dominica immediately thereafter. He said that he would be law-abiding while on bail, not interfere with any witness or evidence in the matter, and that he will not pervert the course of justice whether in relation to himself or any other person.
32. The Claimant noted that people can remain incarcerated at the State Prison for several years prior to trial.
33. Mr Lehrer said that bail ought to be granted to him because:
 - 1) It is in the public interest that the Constitutional presumption of innocence be upheld;
 - 2) It is also in the public interest to enable him to access emergency medical care which was unavailable on the island as there was a "potential for an early demise if urgent medical care is not accessed;" and
 - 3) By virtue of his constitutional right to life, he ought to be permitted to access the medical attention.

Medical Report

34. The Claimant annexed to his Affidavit a medical report dated the 20th of February 2024. That report was from Dr Ade Aderibigbe. The letter head of the report describes Dr Aderibigbe as a General Medical Practitioner. The letter head states that Dr Aderibigbe obtained his MBBS in Lagos, Nigeria, in 1982 and a Diploma in Asthma Care in 1999 in England. He stated that he has been a licensed Family Physician in Dominica since the 20th of September 1990.
35. Dr Aderibigbe said that he has been Mr Lehrer's family physician for more than ten years.
36. The parts of the medical report highlighted by the Claimant state:

"2. Family history of Familial polyposis and colon cancer. Jonathan needs to have Colonoscopy every other year. The initial test revealed which removed. (sic) Jonathan is six (6) months overdue."

"5. Prostatic Hypertrophy. Jonathan did have consultation with urology specialist group in the USA on 28/September/2021. These were their findings: Prostate specific antigen (PSA) test was 4.3 ng/ml. Johnathan was experiencing poor urine stream, nocturia with urine frequency. Consequently, an MRI was ordered. Multimetrix MRI of the prostate was done on 19 January 2022 with and without intravenous contrast at Akumin Radiology in Aventura, Florida:

- a. Prostate volume was 81cc (normal 30cc) or 2 and a half larger than normal.
- b. Heterogeneous nodular enlargement of the central and transitional zone projecting into the inferior aspect of the urinary bladder. This is chronic.
- c. Item b. above would cause difficulty to urinate plus failure to empty urinary bladder, hence frequency and nocturia.
- d. Another review by urology group on 20/January/2022 clearly and strongly stated the need for MRI guided tissue diagnosis of suspicious areas.
- e. "Neoplasm of uncertain behavior of prostate" needs to be investigated urgently and aggressively.
- f. PSA velocity: PSA accelerated from 4.3ng/ml (2021) to 6.3ng/ml (2022), then 7.4ng/ml. PSA tested at Dominica prison is now 8.3ng/ml (2023).

"There is an 85% chance that Jonathan has prostate cancer. At a relatively young age of 56 years, all indicators make a high grade malignancy that needs immediate attention."

37. A review of the medical report will be done later.

Claimant's Submissions

38. Mr Andrew Pilgrim, KC, on behalf of the Claimant commenced his oral submissions with the proposition that both the Claimant and the Defendant were *ad idem* that Mr Lehrer's health has deteriorated since his incarceration. Counsel said that the medical report sets out the degeneration of the Claimant's health.
39. Counsel submitted that the situation at hand could, ideally, have been resolved through discussion among the parties. However, given the circumstances, an application for bail had to be made.
40. Mr Pilgrim, KC, urged that the Claimant's health rather than expediency be given priority.
41. Mr Pilgrim, KC, stated that of all the procedures available to address the Claimant's condition, that robotic prostatectomy is the least invasive.
42. The Learned King's Counsel said that if the State's concern was with Mr Lehrer going to the United States of America for treatment, then the Claimant was open to having the procedure done in an alternative location, whether for example within the Caribbean Community or in the neighbouring French Departments. Mr Pilgrim, KC, said however, that they would not consent to any temporary or *ad hoc* facility set up in Dominica to treat the Claimant.
43. Mr Pilgrim, KC, stated that the Claimant's medical condition required urgent treatment. He said that an appointment was requested on the 6th of March 2024 to see an urologist locally and the earliest appointment that his client could get was the 10th of May 2024. He said that in the present circumstances, even that appointment would "amount to nothing more than a meet and greet" as the preliminary sonogram test has not been done. Counsel stated that a specialized MRI of the prostate was needed to be done in advance of any visit to a specialist.
44. Counsel for the Claimant also drew attention to Mr Lehrer's recent medical challenges. He stated that: "Prison is not ideal for one fitted with a catheter."
45. The Claimant's counsel noted that the State clings to a fear that Mr Lehrer may not return. He submitted that the Claimant will indeed return. He went on to note that there were, in any event, extradition Treaties, which can be used to secure the return of persons to a jurisdiction.

Affidavits on behalf of the Defendant

46. The acting Superintendent of Prisons, Mr Edmund, in his Affidavit, accepted that recommendations were made by the Claimant's doctor regarding Mr Lehrer's diet and

possible treatment. However Mr Edmund noted that the visit by the private medical doctor to the Claimant was not done in keeping with the prison rules.

47. Acting Superintendent of Prisons Edmund accepted that the recommended "high fiber diet is not readily available at the Dominica State Prison." He however noted that "special consideration" was given to Mr Lehrer, and that the Claimant was afforded "the privilege to have food supplies delivered to him from the outside on a much more regular basis than is normally permitted to ensure that his dietary recommendation is met."
48. Mr Edmund acknowledged that the Claimant did have a catheter inserted, but the acting Superintendent of Prison was unable to speak about the complaints the Claimant made about the health protocol. Mr Edmund said that the failure to change the bag was Mr Lehrer's fault as the Claimant refused on the 4th of April 2024 to be taken to the Woodbridge Bay Health Center in Fond Cole to have the bag changed.
49. The acting Superintendent of Prison said that on the 8th of April 2024 the State Medical Doctor during a prison visit offered to change the catheter, but Mr Lehrer refused to have it done.
50. Mr Edmund noted that Mr Lehrer is permitted to have twice as many daily showers as compared to the general prison population. Mr Lehrer is given a five gallon pail of water as a precautionary step in the event the water supply is interrupted. The Claimant has also been provided with sanitization liquid to avoid infections in dealing with the catheter.
51. The acting Superintendent of Prisons said that Mr Lehrer is housed in a cell by himself and that cell contains a stainless-steel toilet for his use.
52. Mr Edmund said he could not respond to the statements made by the Claimant of conversations with the nurse.
53. Acting Assistant Chief of Police, Mr Joeffery James, annexed to his Affidavit a Certificate of Naturalisation, No 155 of 2011, showing that on the 22nd of June 2011, Mr Lehrer, who gave his address as New Jersey, United States of America, obtained citizenship in the Commonwealth of Dominica pursuant to section 8 of the **Citizenship Act, Chapter 1:10**.
54. Mr James also noted that the Claimant has two children, Benjamin and Ethan, who reside in the United States of America.
55. Acting Assistant Chief of Police James said that "overwhelming evidence was obtained by the team of investigators" against the Claimant and his co-accused. He said that there was a "strong prima facie case based on cogent, compelling evidence" against the claimant "including and not limited to direct eye witness evidence, circumstantial evidence and scientific evidence." Mr James went on to state that "besides eye witness evidence there is strong circumstantial evidence... and the physical evidence which includes and is not

limited to spent shells, a firearm, a spent shell casing and a spent bullet which is awaiting forensic analysis."

56. Mr James stated that he was at the Magistrate's Court on the 15th of March 2024 for the Preliminary Inquiry, but neither the Claimant nor his co-accused was present. According to the acting Assistant Chief of Police, the claimant's co-Accused was ill with COVID on that day.
57. Mr James acknowledged that there was agreement between Counsel for the State and Counsel for the accused to proceed with the Committal Proceedings by way of Paper Committal. Mr James indicated that the Prosecution intended to make partial disclosure of the evidence by Monday the 15th of April 2024. He also indicated that once the results of the forensic examinations are received, that disclosure will be made "in a timeous manner."
58. The acting Assistant Chief of Police indicated that he spoke with the Medical Director at the Dominica China Friendship Hospital and that he was told a number of things. The lead investigator said he was informed that:

- 1) There is an urologist attached to the hospital.
- 2) There is also an urologist in private practice.
- 3) At the Dominica China Friendship Hospital they are able to treat persons with prostate cancer.
- 4) A PSA test is suggestive of cancer but is not conclusive.
- 5) Laparotomy, which is an alternative procedure to robotic prostatectomy, is available in Dominica

59. Mr James noted that even though Mr Lehrer was a Dominican citizen, the Claimant still carries an American passport.
60. The acting Assistant Chief of Police posited that there was "a countervailing interest of the community particularly that of Soufriere" that the Claimant should be refused bail. He also stated that in the past, the Claimant issued threats to the workers at Coulibri Ridge Resort. Coulibri Ridge Resort was owned by the now deceased persons whose deaths the Claimant is charged with. According to Mr James, if the Claimant was granted bail, there was the possibility of reigniting some conflict.

Defendant's Submissions

61. Mr Keith Scotland, Counsel for the Defendant, noted that "bail is not a given" and that the provisions of sections 6 and 7 of the **Bail Act** must be considered.

62. Mr Scotland noted that the issue of health was the sole basis of the Claimant's bail application. He stressed that: "We have not reached the stage of a diagnosis of prostate cancer." Counsel noted that even without a diagnosis, the Claimant was citing the issue of treatment. Mr Scotland stated that even if there was a need for treatment, although robotic prostatectomy was not available in Dominica, the alternative procedure of laparotomy was readily available.
63. Counsel for the Defendant in his submission referred to extracts from three cases. He urged that the caution expressed in the speeches of the various judicial officers in those cases be borne in mind.
64. Mr Scotland first referred to Lord Bingham of Cornhill in **Devendra Hurnam v The State (Mauritius), UKPC 49 (PC)** at paragraph 1:

"...courts are routinely called upon to consider whether an unconvicted suspect or defendant should be released on bail, subject to conditions, pending his trial. Such decisions very often raise questions of importance both to the individual suspect or defendant and to the community as a whole. The interest of the individual is of course to remain at liberty, unless or until he is convicted of a crime sufficiently serious to justify depriving him of his liberty. Any loss of liberty before that time, particularly if he is acquitted or never tried, will inevitably prejudice him and, in many cases, his livelihood and his family. But the community has a countervailing interest, in seeking to ensure that the course of justice is not thwarted by the flight of the suspect or defendant or perverted by his interference with witnesses or evidence, and that he does not take advantage of the inevitable delay before trial to commit further offences."

65. Counsel referred to two extracts from **Tyreke Mallory v Director of Public Prosecutions, SCCrApp No. 142 of 2023**, a matter emanating from the Commonwealth of the Bahamas. Mr Scotland thought the passages he referred to were relevant to this present matter. The Bahamian Court's decision in **Tyreke Mallory** was delivered by Justice of Appeal Evans, who said:

"18. ...the appellant has been charged with the offence of murder, which carries a very serious penalty. It is for this very reason that it is not hard to conclude that an accused facing the same would opt not to appear or attend his trial.... It is now well established that the seriousness of an offence is not a free-standing ground for the refusal of a bail application, but it is a consideration in determining whether the accused is likely to appear for trial."

"24. ...this issue goes beyond whether the appellant will appear for his trial but turns on whether he is a threat to society."

66. It has to be noted that Mr Pilgrim, KC, on behalf of the Claimant did submit in rebuttal that there was no evidence Mr Lehrer posed any threat to the peace and good order, or that there was anything to substantiate the implication of the statement of acting Assistant Chief of Police James of any likely disquiet in the village of Soufriere where the Claimant resided. There was merit in Learned Kings Counsel rebuttal on that point.

67. Mr Scotland made reference to the case out of Saint Lucia, **Sharman Rosemond v Police Constable Charles No 190 and Others, SLUHCV 2003/0096**. Counsel noted that in that matter, Justice Ola-Mae Edwards (as she was then), in her judgment said at paragraph [85]:

"The discretion of the Court to grant bail in Murder cases must be exercised responsibly. This is a very serious crime and it is in the public interest that a person alleged to have committed such a crime and whose guilt may be proved, should be available to stand trial within a reasonable time."

Claimant's rebuttal Affidavits

68. Even though the Claimant did not file the rebuttal Affidavits in a timely manner, it is necessary to consider the substance of the two Affidavits that were ultimately filed.

69. The Claimant in his Affidavit in response to what the acting Superintendent of Prisons deponed, expressly denied that it was his fault in not getting the catheter bag changed. He also sought to explain what occurred on the 8th of April 2024 when he did not consent to have the State's prison doctor change the catheter.

70. Mr Lehrer reiterated much of the previous medical evidence contained in his earlier Affidavit. The Claimant noted that the Superintendent of Prison did not deny the findings of Dr Aderibigbe. The Claimant went into detail about the guidelines for management of the catheter, sanitation and the rights of accused persons. He also referred to various provisions of the **Prisons Act, Chapter 12:70** and the absence of any part of the prison being furnished and equipped to provide proper medical care for prisoners. He contended that he had the constitutional right not to be subject to inhuman or degrading punishment or other treatment, which was absolute and unqualified. He posited that the denial or withholding of urgent or appropriate medical care or food constitutes degrading treatment.

71. The Claimant in his Affidavit in which he seeks to rebut what acting Assistant Commissioner of Police James said, pointed out that he received partial disclosure of some of the evidence in the case against him. He stated that the statement which he saw does not support any eyewitness testimony that he committed the offences as charged.

72. The Claimant suggested that the investigating officer was disingenuous in stating that the Claimant's sons were living in the United States, because they too had Dominican citizenship; he stated that ACP James knew his sons were in the United States studying, because he provided this information to Mr James during the investigation.

73. Mr Lehrer, for the first time in his rebuttal Affidavit and in contrast to what was conveyed in his earlier Affidavit, indicated that because he is central to his business operations, the majority of the workers had to be laid off from the tour business. It is noted though that the cruise season is at an end and the Claimant indicated in an earlier Affidavit that 20 of the employees were seasonal.
74. The Claimant remained silent on the issue that he travels on a United States of America passport and that he still has American citizenship.
75. The Claimant also referred to two High Court decisions out of Anguilla. The first was the judgment of Innocent J in the consolidated matters of **Salim Richardson v Commissioner of Police AXAHCV 2019/0058** and **Shaquille Gumbs v Commissioner of Police AXAHCV 2019/0059**. The other was a judgment of George-Creque J (as she was then) in **Thelston Brooks v The Attorney General and The Commissioner of Police AXAHC 2006/0089**. Two facts ought to be noted:
- 1) In the Commonwealth of Dominica, unlike Anguilla and the other Member States of the Eastern Caribbean Supreme Court, there is a statutory basis for bail.
 - 2) The referenced cases all refer to the generally accepted considerations in the granting of bail:
 - a) the risk of the criminally accused absconding;
 - b) the risk of the individual interfering with the course of justice;
 - c) the need to prevent the accused from re-offending;
 - d) preserving public order;
 - e) the public interest; and
 - f) whether it is necessary to detain the accused for the accused's own protection.

Context

76. What is the reality as it obtains in the Commonwealth of Dominica regarding persons on remand? What can one say about the conditions in which persons awaiting trial are housed? How soon can an accused person expect to be tried? What is the situation with regard to committal proceeds? In other words, what is the context within which Mr Lehrer is making this bail application?
77. The most recent figures presented at Court, on the 13th of March 2024, when the last sitting of the High Court in the Criminal Jurisdiction came to an end, showed that of the 257 males who were at the State Prison, some 119 males were there on remand. They were not at the

prison doing a sentence; they were awaiting their preliminary inquiries to be held, to be indicted and to have their trials heard. In some cells, there could be as many as 36 persons who sleep on triple decker bunk beds. Mr Lehrer however has a cell to himself.

78. Of the males on remand at the prison, as of the 8th of April 2024, 38 of them – including the Claimant and his co-accused - were on remand for murder. Some of these remand prisoners have been in custody in excess of seven years and their preliminary inquiries have not yet been held. When this application was heard on the 9th of April 2024, the Claimant and his co-accused were at the prison for about four months and three days.
79. Two of the persons on remand for murder were recently (earlier this month) indicted and would therefore appear for their trial at the High Court this month. One of the recently indicted accused has been at the prison for more than four years and the other, for more than three years and nine months.
80. It is not unusual in the Commonwealth of Dominica for murder accused to apply for and receive bail. In the past nine months, at least three murder accused were granted bail, with the State not objecting to the granting of bail in two instances and in the other, the accused was given bail because of the failure of the Magistrate to conduct the preliminary inquiry as mandated by the High Court. It should also be noted that two of the accused persons who were granted bail have not yet accessed it and remain on remand at the prison.
81. When bail is granted, there is the usual requirement for a surety or sureties amounting to the sum of the bail. The other conditions generally include:
 - a residential order specifying where the accused person must live and a prohibition on changing residence without a variation Order from the Court;
 - sometimes, in addition to specifying the residence, a curfew order;
 - a prohibition against traveling outside of the jurisdiction without the Court's prior approval;
 - restrictions on communicating in any form, whether directly or indirectly, with the witnesses for the State;
 - a requirement for periodic reporting to a specified police station within stipulated hours to sign in;
 - directions about court attendance; and

- a penalty clause regarding the forfeiture of the recognizance and/or a revocation of bail in the event of a breach of a condition of bail or if the person while on bail is charged with an offence triable on indictment.

82. It is immediately apparent that many of these customary conditions are inapplicable to the Claimant's situation. Mr Lehrer's application for bail indicates his intention to be away from this jurisdiction for an extended period.
83. Allied to the issue of an extended time on remand is the exceedingly slow pace in Dominica at which the committal proceedings take place.
84. In Dominica, a delay in the holding of the committal proceedings does not give a murder accused an automatic right to apply for bail. In Saint Vincent and the Grenadines, for example, the **Criminal Procedure Code, Chapter 172** of the Laws of Saint Vincent and the Grenadines, Revised Edition 2009, section 43(7)(a) entitles a murder accused whose preliminary inquiry has not commenced within nine months of being charged to "apply to the High Court for bail and the High Court may in its discretion grant bail on such conditions as it may think fit." In Dominica, as noted earlier, (at paragraph 6), the **Bail Act**, at section 7(1) lists murder as one of the seven offences for which "the court shall not grant bail unless it is satisfied that appropriate circumstances exist to justify the granting of bail."
85. A charge ought not to be laid on the basis of suspicion. It is only after the authorities have gathered sufficient evidence to make a *prima facie* case, showing that an offence was committed and that the suspect could have been the one who committed the offence that a suspect ought to be charged.
86. If the committal proceeding for a murder accused who is detained in custody is not held within a reasonable time after the charge is laid, then that may be an appropriate circumstance to justify the granting of bail.
87. Courts have been minded to entertain bail applications for persons accused of murder when there have been protracted delays by the State in having the preliminary inquiry conducted. Such delays are considered to be in breach of the constitutional imperative of an individual's right to a fair trial in a reasonable time. In the **Attorney-General of Guyana v Persaud, (2010) 78 WIR 335**, Guyana's Court of Appeal considered a delay of eight years in the holding committal proceedings for a murder accused. The Court's analysis of the issue as it appears in the headnote of the case demonstrates the evolving approach to bail for murder accused:

"The provision of the Constitution displaced the common law practice in relation to bail for persons charged and art 139(4) [of the Guyana Constitution] placed no limitation nor created any exception to the categories of criminal offences to which it applied. The submission that the respondent ought not to have been released on bail since he had been charged with murder and murder had never been a

bailable offence at common law marked a failure to appreciate the well-constructed approach of the judge in the instant case, having found a breach of art 144(1) of the Constitution, to fashion a relief while bearing in mind at the same time the need to balance the infringement of a constitutional right against the public interest in the attainment of justice.... Each case had to be considered on its own merits and apart from the complexity of the case, the length of the delay, the conduct of the prosecution and accused, regard had to be had to the availability of institutional resources, system delays in the court system and the existing court backlog together with social and economic conditions."

88. The principles which emerge from **Persaud** are:

- a) The common law practice that the murder accused remain in custody until trial is not sacrosanct, but can be rebutted.
- b) The fundamental rights provisions of the Constitution provides one of the avenues for accessing bail.
- c) When there is a breach of the right to a trial in a reasonable time, the person's right to bail has to be balanced against the public interest in determining the best interest of justice.
- d) It is necessary to consider a wide range of issues, including the complexity of the case; if the delay is significant; where the fault lies that caused the delay; institutional, administrative and judicial capacity; and relevant socio-economic realities.

89. The Law Lords in **Hurnam**, cited with approval an earlier case from Mauritius, **Nordally v Attorney-General [1986] MR 204**, where it was held that based on the Constitutional provision:

"that the suspect's remaining at large is the rule: his detention on the ground of suspicion is the exception and, even then, if he is not put on his trial within a reasonable time he has to be released."

90. The question is: can there be a trial of the Claimant in a reasonable time?

91. In the case against Mr Lehrer and his co-accused, both the State and the accused persons have indicated that they are willing to proceed by way of paper committal. This requires the State to disclose in a timely manner to the Claimant and the co-accused the evidence in its possession upon which the two charges of murder are based. It means as well that the committal proceedings could be done within an hour, and not extend for years as has been the case with many other preliminary inquiries in Dominica.

92. According to Mr Lehrer's Affidavit, paragraph 17, the preliminary inquiries were adjourned to the 16th of July 2024. This means that if the matters are committed to the High Court, the trial can take place during the sitting of the Criminal Court that commences in September 2024. That schedule fits the timeline mentioned in the **Needham's Point Declaration on Criminal Justice Reform: Achieving A Modern Criminal Justice System** (in the Caribbean) which states that: "As a rule, trials should be held within one (1) year of the accused being charged (for indictable offences)."
93. While the vast majority of the persons on remand have been in custody longer than Mr Lehrer, there is every likelihood the Claimant's trial will take place before all of the other murder accused, save and except the two who were indicted earlier this month. This is possible because of the election to proceed by way of paper committal. There can be no complaint at this stage that the trial will not take place within a reasonable time.

Considerations

94. In **Hubbard v Police [1986] 2 NZLR 738**, a case from New Zealand, Chilwell J at page 739 summarized the central challenge in considering bail this way:

"There are two main tests involving factual questions which have to be considered by the Court in determining whether to grant or refuse bail. They are, first the probability or otherwise of the defendant answering to his bail and attending at his trial, and secondly the public interest."

95. Under the test of the probability or likelihood – or otherwise – of the applicant for bail attending trial, several factors were identified by Chilwell J and these factors can be assessed in relation to the Claimant:

- (i) The nature of the offence with which the person is charged, and whether it is a grave or less serious one of its kind.

- Mr Lehrer is charged with a double homicide. Murder is one of the most serious, if not the most serious, offence in Dominica.

- (ii) The strength of the evidence; that is the probability of conviction or otherwise.

- There has been no detailed analysis of the quality of the State's evidence. There has not yet been full disclosure to the Claimant. Acting Assistant Chief of Police James in his Affidavit said that the

State's case involves eyewitness evidence, as well as forensic and circumstantial evidence. His suggestion therefore is that the State has a good case.

(iii) The seriousness of the punishment to which the person is liable; and the severity of the punishment that is likely to be imposed.

- There is no indication that the State has served a 'Death Penalty Notice' on the Claimant (or his co-accused). In the absence of any such notice, if the Claimant is convicted of the double homicide, he faces a maximum sentence of life imprisonment.

(iv) The character and past conduct or behaviour of the accused.

- There is nothing to suggest that prior to this matter that the Claimant was either accused or convicted of any offence. It must be noted however that although he obtained citizenship in Dominica and took an oath of allegiance to Dominica, he maintained his American citizenship which may well be in breach of the law of the United States of America. His failure to disclose that he maintained his US citizenship was a cause for "judicial disquiet" to adopt Mr Scotland's terminology.

(v) Any other special matter that is relevant in the particular circumstances to the question of the likelihood of the accused appearing or not appearing.

- The Claimant has indicated that he wishes to move beyond the jurisdiction of the court – to return to the country of his birth. His children are also in the USA, a fact which the Claimant did not initially disclose. On the other side of the scale, Mr Lehrer has significant investments and business interests in the Commonwealth of Dominica and has been a citizen of the country for almost thirteen years.

96. With regard to the public interest, there are several considerations:

(i) How speedy or how delayed is the trial of the accused likely to be?

- Mr Lehrer's Counsel and Counsel for the State have agreed to proceed by way of Paper Committal. Once the State provides disclosure of its evidence, there can be a trial within six months if the matter is committed to the High Court.

(ii) Whether there is a risk of the accused tampering with witnesses.

- There is nothing to suggest that the Claimant is likely to tamper with witnesses.
- (iii) Whether there is a risk that the accused may re-offend while on bail.
- There is nothing to suggest that the Claimant is likely to breach the laws of Dominica.
- (iv) The possibility of prejudice to the accused in the preparation of the defence.
- The Claimant did not suggest nor provide any evidence that remaining in custody will prejudice him in the preparation of his defence.
- (v) Any other special matter that is relevant to the particular circumstances to the public interest.
- Notwithstanding the presumption of innocence, the prevailing practice which is underscored by the **Bail Act** is for persons accused of serious offences such as murder, in the absence of substantial reasons, to remain on remand until trial.

97. In the Jamaican case of **Phillip Stephens v The Director of Public Prosecutions, Claim No HCV 05020 of 2006**, Sykes J (as he was then) in addressing the provision in the **Jamaica Bail Act** which is similar to section 6 of the **Dominica Bail Act**, said, at paragraph 25, that:

“...one possible analytical approach to bail in a pre-trial situation could be as follows. The court should:

- a) begin with the high constitutional norm of liberty and therefore lean in favour of granting bail (i.e restoring the constitutional norm);
- b) consider whether there are grounds for refusing bail;
- c) ask whether the grounds for refusing bail are substantial;
- d) consider whether conditions can adequately manage the risks that may arise in the particular case and how effective the conditions may be, assuming there is opposition to bail or bail is not opposed but the prosecution are asking for conditions to be attached.”

98. Justice of Appeal Mr Patrick Brooks of Jamaica, in the case of **Huey Gowdie v R** [2012] JMCA Crim 56, endorsed the approach outlined by Mr Justice Sykes in **Stephens**. He reiterated that even “where there are substantial grounds for refusing bail” that the Court must then consider whether imposing conditions can adequately manage the risks that may arise and how effective those conditions would be.

99. Among the questions that must therefore be asked and answered is: what conditions could be imposed on Mr Lehrer to mitigate the risks and ensure that if he is given bail, that he returns to the Commonwealth of Dominica in good time for his trial? Some of the considerations could include:

- A substantial bond with a surety of the same sum. That amount must be sufficiently significant so that it reinforces the seriousness of the offences for which the Claimant is charged and operates as a persuasive influence with regard to compliance. A sum of ten million dollars seems reasonable in these circumstances.
- The surety must be a family member, or a business associate, or someone of similar stature. Certainly, the surety must be someone with significant influence in relation to the Claimant and an individual who would ensure that the Claimant abides by the conditions of his bail.
- Prior to accessing bail, the Claimant would have to provide proof that he has revoked his American citizenship. That act would give meaning to the oath he took when he became a citizen of the Commonwealth of Dominica on the 22nd of June 2011 and demonstrate that he is generally compliant with and respects the law.
- Provide a sworn undertaking that he would not seek to reactivate his American citizenship while on bail.
- Commit to returning to Dominica upon conclusion of his medical procedure; and not to travel to any third country.
- Provide a guarantee to pay for any and all expenses that may be incurred by the State in seeking to have him return to Dominica, in the event that he does not do so voluntarily and immediately after his medical procedures.
- Provide an irrevocable consent to be extradited. Such an undertaking would indicate that he would not contest extradition, (should it become necessary to seek his extradition).

- Undertake not to breach the laws of the United States of America while he is there.
- Ideally, the Claimant ought to have a tracking device fitted to his body.
- Upon his return to Dominica, to reside at Bois Collette Estate, and not leave the Commonwealth of Dominica without first getting the approval of a Judge of the High Court.
- Upon his return to Dominica, to report to the Grand Bay Police Station, once a week, on Monday's, sometime between 6.00 am and 6.00 pm, to sign in.
- If he breaches any condition of his bail, or if he is charged with any offence anywhere which has a prescribed penalty of at least two years imprisonment, then his recognizance becomes liable to be forfeited and his bail may be revoked.

100. Those are some of the conditions that could be considered as a response to the substantial grounds for refusing bail. It is noted however that there is a general undesirability to have to pursue extradition.

Review of Medical Report

101. The Claimant's urgent application for bail was predicated on his health condition.

102. Dr Aderibigbe's medical report was not compelling. There were a number of reasons that his expert report was not as persuasive as the Claimant may have wished. The observations made about the doctor's report include:

- 1) It is noted that Dr Aderibigbe is not an urologist. He is a primary care physician. He can make referrals to a specialist. He did not indicate that he referred Mr Lehrer to any expert; rather he stated what needs to be done, in terms of diet and procedures to be done.
- 2) While his report is dated the 20th of February 2024, it is unclear as to when he did in fact examine the Claimant: was it shortly after the Claimant was remanded to prison in December 2023 or was it closer to when the report is dated (February 2024)? This question arises particularly because at point 5. f. of the doctor's report, he gives the year of the PSA reading at the Prison to be 2023.
- 3) It is evident that the complaint of "grave distress and increasing difficulty with urination, inability to empty my urinary bladder and nocturia" that the Claimant complained that he experienced in February 2024 at the prison

at paragraph 21 of his Affidavit was nothing new. Dr Aderibigbe at point 5. of his report referred to Mr Lehrer as “experiencing poor urine stream, nocturia and urine frequency” as factors leading to an MRI being ordered and “the Multiparametric MRI of the prostate was done on 19 January 2022 with and without intravenous contrast at Akumin Radiology in Aventura, Florida.” Although the placement of the catheter was new, the referenced underlying issue was nothing new nor recent. Those symptoms were the very reasons stated in the medical report for the tests in Florida more than two years ago.

- 4) At 5. b. of the medical report described the: “Heterogeneous nodular enlargement of the central transitional zone projecting into the inferior aspect of the urinary bladder” as “chronic.” The issue has therefore persisted for some time and in contrast to an acute medical condition.
- 5) It was unclear from the report how the doctor determined that the colonoscopy was six months overdue given the dates that he provided for Mr Lehrer’s medical procedures that were done in the United States of America.
- 6) There has not been any confirmation that the Claimant has prostate cancer. Notably, although the doctor surmised that there was a high probability that the Claimant has prostate cancer, there is also a possibility that the Claimant does not have cancer, however the doctor went ahead and stated that Mr Lehrer “would need robotic prostatectomy.” That surgical procedure however can be considered aggressive treatment for cancer.

Findings

103. Ultimately, a determination has to be made as to whether satisfactory conditions can and ought to be imposed to manage the risks associated with granting the Claimant bail.

104. Lord Bingham, on behalf of the Board of the Privy Council in **Hurnam**, said, at paragraph 15:

“It is obvious that a person charged with a serious offence, facing a severe penalty if convicted, may well have a powerful incentive to abscond.... Where there are reasonable grounds to infer that the grant of bail may lead to such a result, which cannot be effectively eliminated by the imposition of appropriate conditions, they will afford good grounds for refusing bail.... The seriousness of the offence and the severity of the penalty likely to be imposed on conviction may well, as pointed out at the beginning of this paragraph, provide grounds for refusing bail, but they do not do so of themselves, without more: they are factors relevant to the

judgment whether, in all the circumstances, it is necessary to deprive the applicant of his liberty."

105. It must be noted that while Mr Lehrer has certain medical needs, there are absolutely no conclusive findings that he has cancer. It is premature to enter into any consideration of the Claimant traveling overseas for robotic prostatectomy versus laparotomy which is available in Dominica. Should one engage in treatment of a condition that is not yet known to exist? Certainly not. What is needed at this time is a fulsome diagnosis to ascertain the Claimant's true condition, then after that one can address any issues which become apparent.

106. Mr Lehrer, according to his Certificate of Naturalization was born on the 12th of March 1966. He is now 58 years old. His medical complaints may not be unfamiliar to males in his age group. He is among the oldest persons on remand for murder at the prison. Being confined on remand and the restrictions of being in a prison must be difficult and challenging for any individual, including the Claimant. However the rule of law and the operation of the justice system means that persons accused of murder end up being on remand at prison unless substantial reasons exist for their release.

107. The Claimant possesses the means to abscond if granted bail. He is asking to go to the country of his birth for medical attention, including having a procedure done that has not yet been determined is needed. He has the means to relocate. He does not have to be resident in the Commonwealth of Dominica to reap the benefits and profits of his productive investments in Dominica. He has historical ties in the United States of America and he has family members (his sons) who are in the United States of America.

108. Every effort has been made by the Prison Authorities to accommodate the Claimant. Mr Lehrer receives at the institution what can be described as preferential treatment:

- While other remand prisoners are housed in numbers of up to 36 persons in a cell, the Claimant is housed in a cell by himself, which has a stainless steel toilet.
- The Claimant is allowed to have twice as many daily showers as the general prison population and is provided with a five gallon container of water as a precautionary measure in the event that there is an interruption of the water supply.
- The Claimant has the privilege of being provided from outside of the prison with whatever food he requires to meet his recommended dietary needs and does not have to depend on the (unsuitable) diet available at the prison.
- The Claimant's private physician has made unauthorized visit to the prison without any repercussion or sanction being enforced against Mr Lehrer.

The Claimant has also been seen by the State Medical Doctor at the prison. In contrast, the Superintendent of Prisons on the 13th of March 2024 reported during his 'Jail Delivery' that there were 56 mentally ill inmates at the prison and the psychiatrist visited the facility once a month.

109. The Claimant, who is charged with a serious offence, has not satisfied the requirement of section 4(3) of the **Bail Act**; Dominica's statutory framework mandates that the Claimant must show that there is just cause in all the circumstances to grant him bail. Based on the review of the findings of Dr Aderibigbe's report at paragraph 102 above, Mr Lehrer is unable to establish any just cause to be granted bail at this time.

110. Given the facts and circumstances disclosed in the Claimants application, as well as his failure to be candid regarding his citizenship of the United States of America and his non-disclosure about his family members residing in the United States of America, the Claimant has not satisfactorily established that circumstances exist to justify the granting of bail as contemplated by section 7(1) of the **Bail Act**.

111. Further, subsections 7(2)(a) and 7(2)(e) of the **Bail Act** stipulate that: "The appropriate circumstances... of which the court must be satisfied include the court being satisfied that (a) the defendant will surrender to custody; ... and (e) that it is in the public interest to grant bail." In relation to the surrendering to custody and the public interest, the threshold for the granting of bail has not been met.

112. The provisions of subsections 7(2)(a) and 7(2)(c) referred to above express in an alternative way what is found at subsections 6(1)(a)(i) and 6(1)(b)(iv), which state respectively that "the court may refuse an application for bail if the court is satisfied that there are substantial grounds for believing that the person if released on bail... would fail to surrender" or "the court is satisfied that the defendant should be kept in custody for the preservation of the public order." Indeed, it is believed that there is every likelihood that if the Claimant leaves Dominica, it is unlikely that he will return, given that he faces the possibility of spending the rest of his life in prison.

113. The public interest is best served with Mr Lehrer remaining in custody until his trial.

Order

114. It is Ordered that:

- 1) The Claimant's application for bail is refused.
- 2) The Claimant has not demonstrated that there is any just cause or circumstances to justify the granting of bail.

- 3) The committal proceedings against the Claimant and his co-accused is to proceed by way of paper committal on Tuesday the 16th of July 2024.
- 4) The State is to disclose all statements in its possession as soon as possible, but in any event not later than Tuesday the 18th of June 2024, that is to say one month before the committal proceedings. The State must indicate to the Claimant which of the statements they are relying on, and which statements are to be categorized as unused, having been obtained during the course of the investigation but is not being relied on by the State.
- 5) Any indictment to be filed and served ahead of the September sitting of the High Court in its Criminal Jurisdiction.

Colin Williams

High Court Judge



By The Court

Registrar (Ag)